S.B.Civil Writ Petition NO.163/2005

M/s. Aravali Agro & Anr. vs. Govind Narayan & anr.

DATE OF ORDER : - 25.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sangeet Lodha, for the petitioners.

None present for the respondents.

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Heard learned counsel for the petitioners as no one is present for the respondents despite service which was affected in February, 2005 ; despite the fact that the notices were issued for final disposal of the writ petition and despite the fact that the proceedings before the trial court were stayed by this Court on 11.1.2005.

It appears from the facts of the case that the petitioners want to produce one witness Chetan Dave and according to learned counsel for the petitioners, the witness was present in the Court on 16.9.2004 but because of other engagement of the learned counsel for the petitioners, the said witness could not be examined and, therefore, the trial court closed the evidence of petitioners and thereafter rejected their application under Section 151 CPC seeking permission to produce the witness Chetan Dave on the ground that the application contains no signatures of Chetan Dave and there is no signature of Chetan Dave on

the order-sheet dated 16.9.2004 and as such, the trial court held that the facts stated are wrong.

It is clear from the averments made by the petitioners that the petitioners specifically stated that their witness was present but because of absence of the advocate, his evidence was not recorded. Therefore, they may be reason for not recording the presence of witness because nobody was there to inform that the witness was present on 16.9.2004.

In view of the totality of the facts of the case, the trial court should have afforded one opportunity to the petitioners to produce witness Chetan Dave.

In view of the above discussion, the present writ petition is allowed, the impugned order dated 30.10.2004 is set aside and the petitioners are permitted to produce one witness namely, Chetan Dave on payment of cost of Rs.1,000/- to the respondent no.1. Only one opportunity will be granted to the trial court to the petitioner and that too for producing only Chetan Dave and none else.

(Prakash Tatia), J.

s.phophaliya/-